REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

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At the outset, Applicants thank the Examiner for her telephone discussion with the Applicant's representative on November 1, 2006, in which the Examiner and the Applicants' representative discussed the formality rejections in the outstanding Office Action. Applicants also thank Special Programs Examiner William Krynski for his helpful advice in a telephone message of December 21, 2006. It is believed that the contents of the discussion and SPRE Krynski's advice are reflected in this amendment.

Claims 1, 3-6, and 10-16 are now pending in this application.

In the outstanding Office Action, the Office noted that the Applicants' amendment dated February 4, 2005 did not comply with 37 C.F.R. 1.173(b). Claim 12 was rejected under 35 U.S.C. §112, second paragraph as indefinite because claim 12 was amended in the reissue application, but not in the reexamination application with which the reissue application has been merged. Claim 11 was rejected under 35 U.S.C. §251 as improperly broadened in a reissue application made and sworn to by the assignee. The reissue declaration was objected to as defective, and claims 1, 3-6, and 10-16 were rejected under 35 U.S.C. §251 as based upon the defective reissue declaration. Claims 1, 3-6, and 10-16 were rejected under 35 U.S.C. § 103(a) as obvious over Ishii, U.S. 2002/0037350A1, in view of Wakamatsu, U.S. Patent No. 4,835,301. Claims 1, 3-6, and 10-16 were also rejected under 35 U.S.C. § 103(a) as obvious over Anderson, U.S. 6,432,464, in view of Wakamatsu. Finally, claims 1, 3-6, and 10-16 were provisionally rejected on the ground of obviousness-type double patenting over claims 1-6 of copending Application Ser. No. 09/355,980 in view of Wakamatsu.

The Office noted that the Applicants' amendment dated February 4, 2005 did not comply with 37 C.F.R. 1.173(b). In response thereto, Applicants' herein resubmit the proposed amendments of claims 1, 11, 13, and 15 that were not compliant with reissue rules. It is believed that the present submission is consistent with the requirements of 37 C.F.R. 1.173(b). Applicants respectfully request entry of these amendments.

Claim 12 was rejected under 35 U.S.C. §112, second paragraph as indefinite. In response thereto, claim 12 of Application Serial No. 90/007,164 is herein amended. As amended, claim 12 is identical in the two merged applications. Accordingly, Applicants request the withdrawal of this rejection.

Claim 11 was rejected under 35 U.S.C. §251 as improperly broadened in a reissue application made and sworn to by the assignee. Applicants' respectfully traverse this rejection. As issued, claim 11 reads as follows:

> A drink composition, comprising:
> (A) a mixture, comprising
> (a) N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester;
> and (b) aspartame; and
> (B) a potable liquid, wherein said aspartame is present in said mixture in an amount of 50 to 97% by weight based on the total amount of said aspartame and said N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester.

As amended, claim 11 reads as follows:

> A method for preparing a drink composition, comprising dissolving:
> (A) a mixture, comprising
> (a) N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester;
> and
> (b) aspartame;
> in (B) a potable liquid, wherein said aspartame is present in said mixture in an amount of 50 to 97% by weight based on the total amount of said aspartame and said N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester and wherein said N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester comprises a C-type crystal.

Amended claim 11 includes a further limitation, in that the N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-L-phenylalanine 1-methyl ester (hereinafter

"neotame") must comprise a C-type crystal, a limitation not found in the patented claim. Further, the amended claim requires that the mixture be dissolved in the potable liquid, again, a limitation not found in the patented claim. Finally, claim 11 is amended to claim a method, not a product. Applicants note that the MPEP specifically states that amending a method claim to claim a product for the first time broadens the claim, suggesting that the reverse amendment (i.e., amending a product claim to claim a method) narrows the claim. *See* M.P.E.P. §1412.03 (I). Furthermore, the patented claims included both method claims and product claims, so claims to a new statutory class are not added. Thus, the scope of the claims in the reissue application, including claim 11, are necessarily no broader than those in the patent as issued. Accordingly, Applicants respectfully request the withdrawal of this rejection of claim 11.

The reissue declaration was objected to as defective, in that it allegedly fails to sufficiently identify the error relied upon to support this reissue application. Claims 1, 3-6, and 10-16 were rejected under 35 U.S.C. §251 as based upon this allegedly defective reissue declaration. Applicants herewith submit a substitute Reissue Declaration more specifically stating that claim 1 was too broad because its scope extended to include sweetener compositions in which the neotame component was not crystalline. Applicants respectfully request withdrawal of these rejections.

Claims 1, 3-6, and 10-16 were rejected under 35 U.S.C. § 103(a) as obvious over Ishii, U.S. 2002/0037350A1, in view of Wakamatsu, U.S. Patent No. 4,835,301. Applicants respectfully traverse these rejections as the Office has failed to state a prima facie case of obviousness.

Claim 1, from which claims 3-6 and 10 depend, is directed to a sweetener composition, comprising neotame and aspartame. The aspartame is present in the

composition in an amount of 50 to 97% by weight based on the total amount of aspartame and neotame. The neotame comprises a C-type crystal.

Claim 11 is directed to a method for preparing a drink composition. The method comprises dissolving a mixture of neotame and aspartame in a potable liquid. The aspartame in the mixture of neotame and aspartame is present in an amount of 50 to 97% by weight based on the total amount of aspartame and neotame. The neotame comprises a C-type crystal.

Claim 12 is directed to a method for preparing a sweetener composition. The method comprises drying A-type crystals of neotame to obtain C-type crystals of neotame, and mixing the C-type crystals of neotame with aspartame to obtain the sweetener composition. The aspartame is present in the sweetener composition in an amount of 50 to 97% by weight based on the total weight of neotame and aspartame. The neotame comprises a C-type crystal having a water content of less than 3% by weight.

Claim 13, from which claim 14 depends, is directed to a method for producing a sweetener, comprising mixing neotame with aspartame. Aspartame is present in the resulting sweetener composition in an amount of 50 to 97% by weight based on the total weight of neotame and aspartame. The neotame comprises a C-type crystal.

Claim 15, from which claim 16 depends, is directed to a method for improving the dissolution rate of neotame. The method comprises mixing neotame with aspartame, prior to dissolving said neotame. The aspartame is mixed with the neotame in an amount of 50 to 97% by weight based on the total weight of neotame and aspartame. The neotame comprises a C-type crystal.

Ishii discloses a sweetener composition having aspartame, neotame, and water. Ishii does not disclose a C-type crystal of neotame, an element of each of the claims in the present application. Wakamatsu discloses crystalline forms of aspartame, but likewise fails to teach

or disclose C-type crystals of neotame. Indeed, Wakamatsu fails to even mention neotame. Failing to teach or suggest sweetener compositions comprising C-type Neotame crystals, or methods of making such sweetener compositions, the cited references cannot render the inventions of claims 1, 3-6, and 10-16 obvious. Accordingly, Applicants respectfully request the withdrawal of these rejections.

Wakamatsu teaches stable crystalline forms of aspartame that are present at different moisture levels. The Office states that drying neotame to get a different crystalline form would be obvious because both aspartame and neotame are artificial sweeteners. However, the Office provides no rationale explaining how the disclosure regarding one sweetener provides the necessary disclosure to suggest combining the disclosure with the disclosure of another sweetener. At best, the Office appears to reject the present claims because it would be obvious to try to dry neotame to result in C-type crystals. The Office is reminded that "obvious to try" is not the standard under 35 U.S.C. §103. *In re Lindell*, 155 USPQ 521, 523 (CCPA, 1967).

Claims 1, 3-6, and 10-16 were also rejected under 35 U.S.C. § 103(a) as obvious over Anderson, U.S. 6,432,464, in view of Wakamatsu. Applicants respectfully traverse these rejections as the Office has failed to state a prima facie case of obviousness.

As noted above, all of the rejected claims are directed to sweetener compositions comprising C-type Neotame crystals, or methods of making such sweetener compositions. Contrarily, Anderson merely discloses synergistic blends of D-tagatose and other high potency sweeteners, of which neotame is one. Anderson fails to teach or suggest any crystalline form of neotame. As noted above Wakamatsu also fails to teach or disclose C-type crystals of neotame, or neotame in any form. Neither of the references teach or suggest C-type crystals of neotame, or combinations thereof. Thus, for the same reasons noted above for the combination of Ishii and Wakamatsu, Anderson and Wakamatsu cannot render the

inventions of claims 1, 3-6, and 10-16 obvious. Accordingly, Applicants respectfully request the withdrawal of these rejections.

Claims 1, 3-6, and 10-16 were provisionally rejected on the ground of obviousness-type double patenting over claims 1-6 of copending Application Ser. No. 09/355,980 in view of Wakamatsu. Applicants respectfully note this rejection, but defer any action until claims in one or the other application are indicated as allowable.

An Information Disclosure Statement describing the results of experiments in which the Applicants tested to confirm if pure C-type crystals of neotame were obtained under the conditions disclosed in U.S. Patent No. 5,480,668 and U.S. Patent No. 5,728,862 is herewith submitted for the Office's consideration.

In light of the above discussion, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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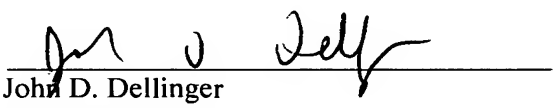

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